

on papayas handled during the 2002–03 fiscal year.

It is hereby determined that the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively, do not effectuate the declared policy of the Act and should not be applied during the 2002–03 and subsequent seasons. Therefore, these sections are suspended effective August 1. Once the order provisions pertaining to papayas grown in Hawaii have been terminated, these and other regulations under the order will no longer be in effect.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order those small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers are defined as those having annual receipts of less than \$750,000, and small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000.

Based on a reported current average f.o.b. price for fresh papayas of \$0.65 per pound, a handler would have to ship in excess of 7.69 million pounds to have annual receipts of \$5 million. Based on a reported current average grower price of \$0.25 per pound, and average annual industry shipments of 40 million pounds since 1996, annual total grower revenues would be \$10 million. Average annual grower revenue would, therefore, be \$25,000. Thus, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This final rule suspends the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively. This is consistent with USDA's decision to terminate the provisions of the Hawaii papaya marketing order. The

order is being terminated because in a recently held referendum, papaya producers failed to support continuation of the program.

This action eliminates the cost of assessments. Currently, handlers are required to pay an assessment rate of \$0.008 per pound handled.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Suspension of the reporting requirements specified in § 928.160 is expected to reduce the total annual reporting burden on Hawaii papaya handlers by 720 hours (60 handlers × 12 reports per year × 1 hour per report).

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the results of a recently held producer referendum, it is hereby found that the regulations in effect under the papaya marketing order do not tend to effectuate the declared policy of the Act and, therefore, are being suspended.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action relieves restrictions on handlers by lifting reporting and assessment requirements; (2) this rule should apply to all papayas handled during the 2002–03 fiscal year, which began July 1; (3) handlers were given notice of this action in a press release issued by USDA; and (4) no useful purpose would be served by delaying the effective date.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 928, §§ 928.160 and 928.226 are suspended.

Dated: July 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–19671 Filed 8–2–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2002–12]

Reorganization of Regulations on “Contribution” and “Expenditure”

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The recently enacted Bipartisan Campaign Reform Act of 2002 (“BCRA”) substantially amended the Federal Election Campaign Act (“FECA” or “the Act”). Among its amendments is the deletion of the office building or facility exception in the definition of “contribution” in section 431(8)(B) of FECA. The Federal Election Commission (“the Commission”) is amending the regulations to reflect this statutory change. As part of this effort, the Commission is also reorganizing the sections defining “contribution” and “expenditure” in its regulations. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), significantly amends the Federal Elections Campaign Act, as amended, 2 U.S.C. 431 *et seq.*, and directs the Commission to promulgate regulations implementing Title I of BCRA within 90 days of enactment and to promulgate regulations implementing the other titles of BCRA that are under the Commission's jurisdiction within 270 days of enactment. *See* BCRA, section 402(c). One amendment to the definition of “contribution” is in Title I, section 103(b)(1) of BCRA. These final rules address this amendment.

Section 103(b)(1) of BCRA deletes current 2 U.S.C. 431(8)(B)(viii), thus eliminating the office building or facility exception from the definition of "contribution." Congress in BCRA also amended 2 U.S.C. 453 to prescribe that "notwithstanding any other provision of the Act, a State or local committee if a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee." In these final rules, the Commission amends the definitions of "contribution" and "expenditure" to comply with these amendments. The Commission has promulgated separate final rules to address the impact of this statutory change on State and local party committees, as well as other changes from BCRA Title I. See Explanation and Justification of "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money" ("Non-Federal Funds Final Rules"), 67 FR part II (July 29, 2002).

This rulemaking is one in a series of rulemakings that the Commission will undertake to implement the various provisions of BCRA. The other separate rulemakings will address: (1) Electioneering communications; (2) coordinated and independent expenditures; (3) the so-called "millionaires" amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) the limitations and prohibition on contributions including the increase in contribution limits, and the ban on contributions by minors and foreign nationals; (5) other provisions, including inaugural committees; fraudulent solicitations; disclaimers; personal use of campaign funds; (6) reporting; and (7) BCRA's impact on national nominating conventions.

In addition, the Commission is reorganizing 11 CFR 100.7 and 100.8 to facilitate locating and reading the definitions of "contribution" and "expenditure," and the exceptions to both definitions.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on Reorganization of Regulations on "Contribution" and

"Expenditure" were transmitted to Congress on July 26, 2002.

Explanation and Justification

The Notice of Proposed Rulemaking ("NPRM") on which these final rules are based was published in the **Federal Register** on June 14, 2002. 67 FR 40881 (June 14, 2002). The Commission received comments from The Campaign and Media Legal Center; Center for Responsive Politics; Common Cause and Democracy 21 (joint comment); Senators John McCain and Russel D. Feingold, and Representatives Christopher Shays and Marty Meehan; and Ms. Cynthia Minchillo-Synhort, RP. The Commission did not hold a hearing on the NPRM, and none of the commenters requested an opportunity to testify.

Non-Federal Funds Final Rules Effect on 11 CFR 100.7 and 100.8

The NPRM raised the possibility of the Commission addressing, as part of the Non-Federal Funds Final Rules, changes to the definitions of "contribution" and "expenditure." The NPRM also stated that any changes to these definitions in the Non-Federal Funds Final Rules would be incorporated into these final rules. Several commenters, including the principal Congressional sponsors of BCRA, expressed concern that the Commission had acted "prematurely" in undertaking this reorganization rulemaking at a time when the soft money rulemaking was not completed. These commenters stated that conforming amendments to the definitions of "contribution" and "expenditure" may be substantive in nature or have substantive impact. They argued that the Commission should issue a new NPRM with proposed regulatory text for the conforming amendments and seek comments before promulgating the final rules.

This rulemaking does not make substantive changes to the current definitions of "contribution" and "expenditures" to conform to the Non-Federal Funds Final Rules. The NPRM contemplated that if the Non-Federal Funds Final Rules included amendments to 11 CFR 100.7 and 100.8, those amendments would be included in these final rules, similar to the way in which in the Brokerage Loans and Lines of Credit final rules are being incorporated in this reorganization. See below.

However, because the Commission's regulations in the Non-Federal Funds Final Rules do not change the definitions of "contribution" or "expenditure," the Commission's statements in the NPRM about the

possibility of the soft money rulemaking affecting these final rules are moot. Other than the reorganization and the changes discussed below, these final rules do not amend the substantive definitions of "contribution" and "expenditure."

Other BCRA Provisions That Affect the Definition of "Contribution" and "Expenditure"

Several commenters noted that other provisions in BCRA affect the definitions of "contribution" and "expenditure." The Commission recognizes that rules implementing the rest of BCRA may require amendments to these definitions. Such changes, however, will be the subject of separate rulemakings described above. The public will receive full notice and an opportunity to comment on the Commission's proposed rules on the implementation of such changes. This final rule, however, makes preparations for the separate rulemakings that may amend the definitions of "contribution" and "expenditure." The structure of current 11 CFR 100.7 and 100.8 is difficult to amend in a clear and comprehensive manner. By reorganizing the rules contained in these two sections into multiple sections, subsequent amendments, in subsequent rulemakings, will be easier for the Commission to incorporate, and easier for the public to identify, comment on, and ultimately use. See discussion about reorganization, below.

"Allocation" Versus "Attribution"

In the NPRM, the Commission raised the possibility of changing the use of the word "allocation" or any of its derivatives to "attribution" or one of its derivatives, and sought comment on this possibility. The proposed rules did not reflect such proposed change. The comments the Commission received on this suggestion did not support this proposed change. One public interest group questioned what such a change would accomplish. Several commenters stated that the necessity for clarification around "allocation" in the rules requires more than a word change, especially in the area of exempt activities. They argued that the allocation provisions in the Non-Federal Funds Final Rules at 11 CFR parts 100 and 300 have direct impact on this issue. They urged the Commission to amend the definitions to reflect the new allocation rules.

In response to those concerns, the final rules do not replace "allocation" and its derivatives with "attribution" or its derivative. As was emphasized in the new Non-Federal Funds Final Rules and

Explanation and Justification, exempt activities conducted in conjunction with Non-Federal activities that are not Federal election activities are governed by 11 CFR 106.1 and 106.7. To the extent that these activities do constitute Federal election activities, however, they must be allocated between Federal funds and Levin funds pursuant to new 11 CFR part 300. Nothing in this reorganization of the “contribution” and “expenditure” definitions changes the use of Federal, non-Federal, or Levin funds for the payment of any exempt activities. To clarify this, a cross-reference to the new allocation rules in 11 CFR 100.24, 104.17(a), and part 300, subparts B, D, and/ or E has been added in the final rules in 11 CFR 100.80 (slate cards and sample ballots), 100.87 (volunteer activity for party committees), 100.88 (volunteer activity for candidates), 100.89 (voter registration and get-out-the-vote activities for Presidential candidates), 100.140 (slate cards and sample ballots), 100.147 (volunteer activity for party committees), 100.148 (volunteer activity for candidates), and 100.149 (voter registration and get-out-the-vote activities for Presidential candidates).

Reorganization of Current 11 CFR 100.7 and 100.8

The Commission is reorganizing 11 CFR 100.7 and 100.8 in these final rules. The reorganizing makes it easier to locate and read the definitions of “contribution” and “expenditure” and the detailed exceptions to those definitions. Three commenters, including the principal Congressional sponsors of BCRA, expressed support for, and encouraged, this reorganization to make the rules more “user friendly” and “easier to read and understand.”

The new rules create four new subparts, B through E, within 11 CFR part 100 which contain the definitions of, and exceptions to, “contribution” and “expenditure.” Subpart B contains sections describing items that are contributions; subpart C contains sections describing items that are not contributions; subpart D contains sections describing items that are expenditures; and subpart E contains sections describing items that are not expenditures. The distribution table attached to these final rules lists where the various paragraphs of 11 CFR 100.7 and 100.8 can now be found within these new subparts.

Inclusion of “Brokerage Loans and Lines of Credit”

The final rules also incorporate another recent change to FECA—the inclusion of a loan of money derived

from an advance on a candidate’s brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate as an item that is not a contribution. The Commission published the final rules, entitled “Brokerage Loans and Lines of Credit,” to amend 11 CFR 100.7(b) and 100.8(b) to include these types of loans as exceptions to the definitions of “contribution” and “expenditure.” See 67 FR 38353 (June 4, 2002). The language in this final rule at 11 CFR 100.83 and 100.144 reflects the language in the “Brokerage Loans and Lines of Credit” final rules. The Commission received no comment on this incorporation of the rules from a previous rulemaking.

Amendments to the Office Building or Facility Exceptions

Current 11 CFR 100.7(b)(12) and 100.8(b)(13) designate that the construction or purchase of an office building or facility are exceptions to the definitions of “contribution” and “expenditure.” New 11 CFR 100.56 (stating that a contribution to national party committees for the construction or purchase of an office building or facility is a “contribution” under the Act) and 100.114 (stating that an expenditures by a national party committees for the construction or purchase of an office building or facility is an “expenditure” under the Act) make clear that these exceptions no longer apply to national party committees. Similarly, in light of BCRA’s amendment of 2 U.S.C. 453, new 11 CFR 100.84 and 100.144 make clear that the office building or facility exceptions still apply to State, local, and district party committees, subject to the provisions of 11 CFR 300.34. The final rules reflect the language proposed in the NPRM. The Commission received no comment on its proposed changes implementing BCRA’s deletion of the office building or facility exception.

Grammatical and Technical Revisions

In addition to nonsubstantive grammatical corrections, minor technical revisions have been made to reflect the reorganization structure. Also, a cross-reference in paragraph (f) of section 100.142 has been corrected, now directing the reader to the other bank loan provisions. Other substantive changes to the definitions of “contribution” and “expenditure” will take place in separate rulemakings.

Other Comments

One commenter criticized the NPRM in general, but made no specific comment or suggestion. Another commenter advocated the complete, or

at least partial, elimination of the exception to the definitions of “contribution” and “expenditure” for recounts and election contests, on the basis that recounts and election contests, which are not Federal elections as defined by the Act, see generally *Federal Election Regulations*, H. R. Doc. No. 44, 95th Cong., 1st Sess. at 40 (1977) (*FEC E&J Compilation* at 38, 42), “serve as an avenue for the use of soft money to influence federal elections,” as evidenced by unregulated contributions used to pay for the 2000 Florida recount. This change is beyond the scope of this rulemaking dealing only with nonsubstantive changes, with the exception of the deletion of the office building or facility exception for national parties.

Distribution Table

100.7 AND 100.8 DISTRIBUTION TABLE

Old section	New section
100.7	100.51(a)
100.7(a)(1)	100.52(a)
100.7(a)(1)(i)	100.52(b)
100.7(a)(1)(i)(A)	100.52(b)(1)
100.7(a)(1)(i)(B)	100.52(b)(2)
100.7(a)(1)(i)(C)	100.52(b)(3)
100.7(a)(1)(i)(D)	100.52(b)(4)
100.7(a)(1)(i)(E)	100.52(b)(5)
100.7(a)(1)(ii)	100.52(c)
100.7(a)(1)(iii)(A)	100.52(d)(1)
100.7(a)(1)(iii)(B)	100.52(d)(2)
100.7(a)(2)	100.53
100.7(a)(3)	100.54
100.7(a)(3)(i)	100.54(a)
100.7(a)(3)(ii)	100.54(b)
100.7(a)(3)(iii)	100.54(c)
100.7(a)(4)	100.55
100.7(b)	100.71(a)
100.7(b)(1)(i)	100.72(a)
100.7(b)(1)(ii)	100.72(b)
100.7(b)(1)(ii)(A)	100.72(b)(1)
100.7(b)(1)(ii)(B)	100.72(b)(2)
100.7(b)(1)(ii)(C)	100.72(b)(3)
100.7(b)(1)(ii)(D)	100.72(b)(4)
100.7(b)(1)(ii)(E)	100.72(b)(5)
100.7(b)(2)	100.73
100.7(b)(3)	100.74
100.7(b)(4)	100.75
100.7(b)(5)	100.76
100.7(b)(6)	100.77
100.7(b)(7)	100.78
100.7(b)(8)	100.79
100.7(b)(9)	100.80
100.7(b)(10)	100.81
100.7(b)(11)	100.82(a) through (d)
100.7(b)(11)(i)	100.82(e)
100.7(b)(11)(ii)(A)(1)	100.82(e)(1)(i)
100.7(b)(11)(ii)(A)(2)	100.82(e)(1)(ii)
100.7(b)(11)(i)(B)	100.82(e)(2)
100.7(b)(11)(i)(B)(1)	100.82(e)(2)(i)
100.7(b)(11)(i)(B)(2)	100.82(e)(2)(ii)
100.7(b)(11)(i)(B)(3)	100.82(e)(2)(iii)
100.7(b)(11)(i)(B)(4)	100.82(e)(2)(iv)
100.7(b)(11)(i)(B)(5)	100.82(e)(2)(v)
100.7(b)(11)(ii)	100.82(e)(3)
100.7(b)(12)	100.84
100.7(b)(13)	100.85

100.7 AND 100.8 DISTRIBUTION TABLE—Continued

Old section	New section
100.7(b)(14)	100.86
100.7(b)(15)	100.87
100.7(b)(15)(i)	100.87(a)
100.7(b)(15)(ii)	100.87(b)
100.7(b)(15)(iii)	100.87(c)
100.7(b)(15)(iv)	100.87(d)
100.7(b)(15)(v)	100.87(e)
100.7(b)(15)(vi)	100.87(f)
100.7(b)(15)(vii)	100.87(g)
100.7(b)(16)	100.88(a) and (b)
100.7(b)(17)	100.89
100.7(b)(17)(i)	100.89(a)
100.7(b)(17)(ii)	100.89(b)
100.7(b)(17)(iii)	100.89(c)
100.7(b)(17)(iv)	100.89(d)
100.7(b)(17)(v)	100.89(e)
100.7(b)(17)(vi)	100.89(f)
100.7(b)(17)(vii)	100.89(g)
100.7(b)(18)	100.90
100.7(b)(19) reserved	Removed
100.7(b)(20)	100.91
100.7(b)(21)	100.92
100.7(b)(22)	100.83
100.7(c)	100.51(b) and 100.71(b)
100.8(a)	100.110(a)
100.8(a)(1)	100.111(a)
100.8(a)(1)(i)	100.111(b)
100.8(a)(1)(ii)	100.111(c)
100.8(a)(1)(iii)	100.111(d)
100.8(a)(1)(iv)(A)	100.111(e)(1)
100.8(a)(1)(iv)(B)	100.111(e)(2)
100.8(a)(2)	100.112
100.8(a)(3)	100.113
100.8(b)	100.130(a)
100.8(b)(1)(i)	100.131(a)
100.8(b)(1)(ii)	100.131(b)
100.8(b)(1)(iii)(A)	100.131(b)(1)
100.8(b)(1)(iii)(B)	100.131(b)(2)
100.8(b)(1)(iii)(C)	100.131(b)(3)
100.8(b)(1)(iii)(D)	100.131(b)(4)
100.8(b)(1)(iii)(E)	100.131(b)(5)
100.8(b)(2)	100.132
100.8(b)(2)(i) and (ii)	100.132(a) and (b)
100.8(b)(3)	100.133
100.8(b)(4)	100.134(a)
100.8(b)(4)(i)	100.134(b)
100.8(b)(4)(ii)	100.134(c)
100.8(b)(4)(iii)	100.134(d)
100.8(b)(4)(iii)(A)(1) ..	100.134(d)(1)(i)
100.8(b)(4)(iii)(A)(2) ..	100.134(d)(1)(ii)
100.8(b)(4)(iii)(B)(1) ..	100.134(d)(2)(i)
100.8(b)(4)(iii)(B)(2) ..	100.134(d)(2)(ii)
100.8(b)(4)(iii)(B)(3) ..	100.134(d)(2)(iii)
100.8(b)(4)(iii)(B)(4) ..	100.134(d)(2)(iv)
100.8(b)(4)(iii)(C)	100.134(d)(3)
100.8(b)(4)(iii)(D)	100.134(d)(4)
100.8(b)(4)(iv)(A)	100.134(e)
100.8(b)(4)(iv)(A)(1) ..	100.134(e)(1)
100.8(b)(4)(iv)(A)(2) ..	100.134(e)(2)
100.8(b)(4)(iv)(A)(3) ..	100.134(e)(3)
100.8(b)(4)(iv)(A)(4) ..	100.134(e)(4)
100.8(b)(4)(iv)(A)(5) ..	100.134(e)(5)
100.8(b)(4)(iv)(A)(6) ..	100.134(e)(6)
100.8(b)(4)(iv)(B)	100.134(f)
100.8(b)(4)(iv)(B)(1) ..	100.134(f)(1)
100.8(b)(4)(iv)(B)(2) ..	100.134(f)(2)
100.8(b)(4)(iv)(B)(3) ..	100.134(f)(3)
100.8(b)(4)(iv)(C)	100.134(g)
100.8(b)(4)(iv)(D)	100.134(h)
100.8(b)(4)(iv)(E)	100.134(i)

100.7 AND 100.8 DISTRIBUTION TABLE—Continued

Old section	New section
100.8(b)(4)(iv)(F)	100.134(j)
100.8(b)(4)(v)	100.134(k)
100.8(b)(4)(vi)	100.134(l)
100.8(b)(4)(vii)	100.134(m)
100.8(b)(5)	100.135
100.8(b)(6)	100.136
100.8(b)(7)	100.137
100.8(b)(8)	100.138
100.8(b)(9)	100.139
100.8(b)(10)	100.140
100.8(b)(11)	100.141
100.8(b)(12)	100.142(a) through (d)
100.8(b)(12)(i)	100.142(e)
100.8(b)(12)(i)(A)(1) ..	100.142(e)(1)(i)
100.8(b)(12)(i)(A)(2) ..	100.142(e)(1)(ii)
100.8(b)(12)(i)(B)	100.142(e)(2)
100.8(b)(12)(i)(B)(1) ..	100.142(e)(2)(i)
100.8(b)(12)(i)(B)(2) ..	100.142(e)(2)(ii)
100.8(b)(12)(i)(B)(3) ..	100.142(e)(2)(iii)
100.8(b)(12)(i)(B)(4) ..	100.142(e)(2)(iv)
100.8(b)(12)(i)(B)(5) ..	100.142(e)(2)(v)
100.8(b)(12)(ii)	100.142(e)(3)
100.8(b)(13)	100.144
100.8(b)(14)	100.145
100.8(b)(15)	100.146
100.8(b)(16)	100.147
100.8(b)(16)(i)	100.147(a)
100.8(b)(16)(ii)	100.147(b)
100.8(b)(16)(iii)	100.147(c)
100.8(b)(16)(iv)	100.147(d)
100.8(b)(16)(v)	100.147(e)
100.8(b)(16)(vi)	100.147(f)
100.8(b)(16)(vii)	100.147(g)
100.8(b)(17)	100.148
100.8(b)(18)	100.149
100.8(b)(18)(i)	100.149(a)
100.8(b)(18)(ii)	100.149(b)
100.8(b)(18)(iii)	100.149(c)
100.8(b)(18)(iv)	100.149(d)
100.8(b)(18)(v)	100.149(e)
100.8(b)(18)(vi)	100.149(f)
100.8(b)(18)(vii)	100.149(g)
100.8(b)(19)	100.150
100.8(b)(20)	100.151
100.8(b)(21)(i)	100.152(a)
100.8(b)(21)(ii)	100.152(b)
100.8(b)(21)(iii)	100.152(c)
100.8(b)(21)(iii)(A)	100.152(c)(1)
100.8(b)(21)(iii)(B)	100.152(c)(2)
100.8(b)(22)	100.153
100.8(b)(23)	100.154
100.8(b)(24)	100.143
100.8(c)	100.110(b) and 100.130(b)

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules do not have a significant economic impact on a substantial number of small entities. This certification is based on that fact that the final rules' only substantive change, eliminating the office building or facility exceptions to the definitions of "contribution" and "expenditure" for national party committees, affects only national party committees. The national

party committees of the two major political parties are not small entities under 5 U.S.C. 601. The other provisions in these final rules have already been certified as not having any significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the Explanation and Justification, the Commission amends Chapter I of title II of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), 438(a)(8).

2. Section 100.7 is removed and reserved.

§ 100.7 [Removed and reserved].

3. Section 100.8 is removed and reserved.

§ 100.8 [Removed and reserved].

4. Part 100 is amended by adding new subparts B, C, D, and E to read as follows:

Subpart B—Definition of Contribution (2 U.S.C. 431(8))

Sec.

- 100.51 Scope.
- 100.52 Gift, subscription, loan, advance or deposit of money.
- 100.53 Attendance at a fundraiser or political event.
- 100.54 Compensation for personal services.
- 100.55 Extension of credit.
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Subpart B—Definition of Contribution (2 U.S.C. 431(8))

§ 100.51 Scope.

(a) The term *contribution* includes the payments, services, or other things of value described in this subpart.

(b) For the purpose of this subpart, a contribution or payment made by an

individual shall not be attributed to any other individual, unless otherwise specified by that other individual in accordance with 11 CFR 110.1(k).

§ 100.52 Gift, subscription, loan, advance or deposit of money.

(a) A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

(b) For purposes of this section, the term *loan* includes a guarantee, endorsement, and any other form of security.

(1) A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid.

(2) A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution.

(3) Except as provided in paragraph (b)(4) of this section, a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(4) A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign.

(5) If a political committee makes a loan to any person, such loan shall be subject to the limitations of 11 CFR part 110. Repayment of the principal amount

of such loan to such political committee shall not be a contribution by the debtor to the lender committee. Such repayment shall be made with funds that are subject to the prohibitions of 11 CFR 110.4(a) and part 114. The payment of interest to such committee by the debtor shall be a contribution only to the extent that the interest paid exceeds a commercially reasonable rate prevailing at the time the loan is made. All payments of interest shall be made from funds subject to the prohibitions of 11 CFR 110.4(a) and part 114.

(c) For purposes of this section, the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.

(d)(1) For purposes of this section, the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

(2) For purposes of paragraph (d)(1) of this section, *usual and normal charge for goods* means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and *usual and normal charge for any services*, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

§ 100.53 Attendance at a fundraiser or political event.

The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution.

§ 100.54 Compensation for personal services.

The payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose, except for

legal and accounting services provided under 11 CFR 100.74 and 100.75, is a contribution. No compensation is considered paid to any employee under any of the following conditions:

(a) *Paid on an hourly or salaried basis.* If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time.

(b) *Paid on commission or piecework basis.* No contribution results where an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his or her own to use as he or she sees fit.

(c) *Vacation or earned leave time.* No contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time.

§ 100.55 Extension of credit.

The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. (See 11 CFR 116.3 and 116.4.) If a debt owed by a political committee is forgiven or settled for less than the amount owed, a contribution results unless such debt is settled in accordance with the standards set forth at 11 CFR 116.3 and 116.4.

§ 100.56 Office building or facility for national party committees.

A gift, subscription, loan, advance, or deposit of money or anything of value to a national party committee for the purchase or construction of an office building or facility is a contribution.

Subpart C—Exceptions to Contributions

§ 100.71 Scope.

(a) The term *contribution* does not include payments, services or other things of value described in this subpart.

(b) For the purpose of this subpart, a contribution or payment made by an individual shall not be attributed to any

other individual, unless otherwise specified by that other individual in accordance with 11 CFR 110.1(k).

§ 100.72 Testing the waters.

(a) *General exemption.* Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(b) *Exemption not applicable to individuals who have decided to become candidates.* This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

§ 100.73 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical

publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

§ 100.74 Uncompensated services by volunteers.

The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution.

§ 100.75 Use of a volunteer's real or personal property.

No contribution results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of this section, an individual's residential premises, shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

§ 100.76 Use of church or community room.

No contribution results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

§ 100.77 Invitations, food, and beverages.

The cost of invitations, food and beverages is not a contribution where such items are voluntarily provided by

an individual volunteering personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.65 and 100.66 to a candidate for candidate-related activity or to any political committee of a political party for party-related activity, to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

§ 100.78 Sale of food or beverages by vendor.

The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial rate, is not a contribution, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: The aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

§ 100.79 Unreimbursed payment for transportation and subsistence expenses.

(a) *Transportation expenses.* Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or any political committee of a political party is not a contribution to the extent that:

(1) The aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and

(2) The aggregate value of the payments made by such individual on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(b) *Subsistence expenses.* Any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution.

§ 100.80 Slate cards and sample ballots.

The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or

other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards. *But see* 11 CFR 100.24, 104.17(a) and part 300, subpart B for exempt activities that also constitute Federal election activity.

§ 100.81 Payments by corporations and labor organizations.

Any payment made or obligation incurred by a corporation or a labor organization is not a contribution, if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

§ 100.82 Bank loans.

(a) *General provisions.* A loan of money to a political committee or a candidate by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it:

(1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;

(2) Is made on a basis that assures repayment;

(3) Is evidenced by a written instrument; and

(4) Is subject to a due date or amortization schedule.

(b) *Reporting.* Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d).

(c) *Endorsers and guarantors.* Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or

she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(d) *Overdrafts.* For purposes of this section, an overdraft made on a checking or savings account of a political committee shall be considered a contribution by the bank or institution unless:

(1) The overdraft is made on an account that is subject to automatic overdraft protection;

(2) The overdraft is subject to a definite interest rate that is usual and customary; and

(3) There is a definite repayment schedule.

(e) *Made on a basis that assures repayment.* A loan, including a line of credit, shall be considered made on a basis that assures repayment if it is obtained using either of the sources of repayment described in paragraphs (e)(1) or (2) of this section, or a combination of paragraphs (e)(1) and (2) of this section:

(1)(i) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(ii) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(2) The lending institution making the loan has obtained a written agreement whereby the candidate or political

committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 through part 9012, or part 9031 through part 9039, contributions, or interest income, provided that:

(i) The amount of the loan or loans obtained on the basis of such funds does not exceed the amount of pledged funds;

(ii) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(iii) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(iv) The loan agreement requires the deposit of the public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(3) If the requirements set forth in this paragraph are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis that assures repayment.

(f) This section shall not apply to loans described in 11 CFR 100.73.

§ 100.83 Brokerage loans and lines of credit to candidates.

(a) *General provisions.* Any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, including an overdraft made on a personal checking or savings account of a candidate, provided that:

(1) Such loan is made in accordance with applicable law and under commercially reasonable terms; and

(2) The person making such loan makes loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit,

or other line of credit in the normal course of the person's business.

(b) *Endorsers and guarantors.* Each endorser, guarantor, or co-signer shall be deemed to have contributed that portion of the total amount of the loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, for which he or she agreed to be liable in a written agreement, including a loan used for the candidate's routine living expenses. Any reduction in the unpaid balance of the loan, advance, or line of credit shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan, advance, or line of credit for which each endorser, guarantor, or co-signer is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser, guarantor, or co-signer bears to the total number of endorsers or guarantors. However, if the spouse of the candidate is the endorser, guarantor, or co-signer, the spouse shall not be deemed to make a contribution if:

(1) For a secured loan, the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan that is used for the candidate's campaign; or

(2) For an unsecured loan, the amount of the loan used for in connection with the candidate's campaign does not exceed one-half of the available credit extended by the unsecured loan.

(c) *Routine living expenses.*

(1) A loan derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, that is used by the candidate solely for routine living expenses, as described in 11 CFR 100.153, does not need to be reported under 11 CFR part 104 provided that the loan, advance, or line of credit is repaid exclusively from the personal funds of the candidate or payments that would have been made irrespective of the candidacy pursuant to 11 CFR 113.1(g)(6).

(2) Any repayment, in part or in whole, of the loan, advance, or line of credit described in paragraph (c)(1) of this section by the candidate's authorized committee constitutes the personal use of campaign funds and is prohibited by 11 CFR 113.2.

(3) Any repayment or forgiveness, in part or in whole, of the loan, advance, or line of credit described in paragraph (c)(1) of this section by a third party (other than a third party whose

payments are permissible under 11 CFR 113.1(g)(6)) or the lending institution is a contribution, subject to the limitations and prohibitions of 11 CFR parts 110 and 114, and shall be reported under 11 CFR part 104.

(4) Notwithstanding paragraph (c)(1) of this section, the portion of any loan or advance from a candidate's brokerage account, credit card account, home equity line of credit, or other line of credit that is used for the purpose of influencing the candidate's election for Federal office shall be reported under 11 CFR part 104.

(d) *Repayment.* The candidate's authorized committee may repay a loan from the candidate that is derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, directly to the candidate or the original lender. The amount of the repayment shall not exceed the amount of the principal used for the purpose of influencing the candidate's election for Federal office and interest that has accrued on that principal.

(e) *Reporting.* Loans derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate shall be reported by the candidate's principal campaign committee in accordance with 11 CFR part 104.

§ 100.84 Office building for State, local, or district party committees or organizations.

A donation made to a non-Federal account of a State, local, or district party committee or organization in accordance with 11 CFR 300.35 for the purchase or construction of an office building is not a contribution. A donation includes a gift, subscription, loan, advance, or deposit of money or anything of value.

§ 100.85 Legal or accounting services to political party committees.

Legal or accounting services rendered to or on behalf of any political committee of a political party are not contributions if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities that directly further the election of any designated candidate for Federal office. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

§ 100.86 Legal or accounting services to other political committees.

Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not contributions if the person paying for such services is the regular employer of the individual rendering the services and if such services are solely to ensure compliance with the Act or 26 U.S.C. 9001 et seq. and 9031 et seq. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

§ 100.87 Volunteer activity for party committees.

The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

(a) *Exemption not applicable to general public communication or political advertising.* Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. For purposes of this paragraph, the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for particular Federal candidates.* Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *Distribution of materials by volunteers.* Such materials are distributed by volunteers and not by

commercial or for-profit operations. For the purposes of this paragraph, payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(e) *Reporting.* If made by a political committee such payments shall be reported by the political committee as disbursements in accordance with 11 CFR 104.3 but need not be allocated to specific candidates in committee reports.

(f) *State candidates and their campaign committees.* Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not contributions, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(g) *Exemption not applicable to campaign materials purchased by national party committees.* Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.88 Volunteer activity for candidates.

(a) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials that include information on or any reference to a candidate for Federal office and that are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not a contribution to such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(b) The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of this section, the term *direct mail* means any mailing(s) by commercial vendors or mailing(s) made from lists that were not developed by the candidate. *But see* 11 CFR 100.24,

104.17(a), and part 300, subparts D and E for exempt activities that also constitute Federal election activity.

§ 100.89 Voter registration and get-out-the-vote activities for Presidential candidates ("coattails" exception).

The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party, is not a contribution to such candidate(s) provided that the following conditions are met:

(a) *Exemption not applicable to general public communication or political advertising.* Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this paragraph, the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for particular Federal candidates.* Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *References to House or Senate candidates.* For purposes of this section, if such activities include references to any candidate(s) for the House or Senate, the costs of such activities that are allocable to that candidate(s) shall be a contribution to such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(e) *Phone banks.* For purposes of this section, payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not a contribution when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such

professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(f) *Reporting of payments for voter registration and get-out-the-vote activities.* If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements in accordance with 11 CFR 104.3, but such payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.78(d).

(g) *Exemption not applicable to donations by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities.* Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.90 Ballot access fees.

Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not contributions.

§ 100.91 Recounts.

A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.4(a) and part 114 apply.

§ 100.92 Candidate debates.

Funds provided to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f) are not contributions.

Subpart D—Definition of Expenditure (2 U.S.C. 431(9))

§ 100.110 Scope.

(a) The term *expenditure* includes payments, gifts or other things of value described in this subpart.

(b) For the purpose of this subpart, a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

§ 100.111 Gift, subscription, loan, advance or deposit of money.

(a) A purchase, payment, distribution, loan (except for a loan made in accordance with 11 CFR 100.113 and 100.114), advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office is an expenditure.

(b) For purposes of this section, the term *payment* includes payment of any interest on an obligation and any guarantee or endorsement of a loan by a candidate or a political committee.

(c) For purposes of this section, the term *payment* does not include the repayment by a political committee of the principal of an outstanding obligation that is owed by such committee, except that the repayment shall be reported as disbursements in accordance with 11 CFR 104.3(b).

(d) For purposes of this section, the term *money* includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instrument payable on demand.

(e)(1) For purposes of this section, the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart E, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for the goods or services is an expenditure. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the expenditure is the difference between the usual and normal charge for the goods or services at the time of the expenditure and the amount charged the candidate or political committee.

(2) For the purposes of paragraph (e)(1) of this section, *usual and normal charge for goods* means the price of those goods in the market from which they ordinarily would have been purchased at the time of the expenditure; and *usual and normal charge for services*, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

§ 100.112 Contracts, promises, and agreements to make expenditures.

A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of

the date such contract, promise or obligation is made.

§ 100.113 Independent expenditures.

An independent expenditure that meets the requirements of 11 CFR 104.4 or part 109 is an expenditure, and such independent expenditure is to be reported by the person making the expenditure in accordance with 11 CFR 104.4 and part 109.

§ 100.114 Office building or facility for national party committees.

A payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of, a national party committee for the purchase or construction of an office building or facility is an expenditure.

Subpart E—Exceptions to expenditures

§ 100.130 Scope

(a) The term *expenditure* does not include payments, gifts, or other things of value described in this subpart.

(b) For the purpose of this subpart, a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

§ 100.131 Testing the waters.

(a) *General exemption.* Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(b) *Exemption not applicable to individuals who have decided to become candidates.* This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign.

Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a new story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news account that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

§ 100.133 Voter registration and get-out-the-vote activities.

Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d). *See also* 11 CFR 114.3(c)(4).

§ 100.134 Internal communications by corporations, labor organizations, and membership organizations.

(a) *General provision.* Any cost incurred for any communication by a membership organization, including a labor organization, to its members, or

any cost incurred for any communication by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

(b) *Definition of labor organization.* For purposes of this section, *labor organization* means an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organization for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(c) *Definition of stockholder.* For purposes of this section, *stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(d) *Definition of executive or administrative personnel.* For purposes of this section, executive or administrative personnel means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) Individuals who run the corporation's business, such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) This definition does not include—

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-(1), of

the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 1.3402(a)-(1).

(3) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 31.3402(a)-(1).

(4) The Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* and the regulations issued pursuant to such Act, 29 CFR part 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional, or supervisory responsibilities.

(e) *Definition of membership organization.* For purposes of this section membership organization means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(1) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(2) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(3) Makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(4) Expressly solicits persons to become members;

(5) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(6) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office.

(f) *Definition of members.* For purposes of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(1) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or

(2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(3) Have a significant organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

(g) *Additional considerations in determining membership.*

Notwithstanding the requirements of paragraph (f) of this section, the Commission may determine, on a case-by-case basis, that persons who do not precisely meet the requirements of the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members may be considered members of the organization.

(h) *Members of local unions.* Notwithstanding the requirements of paragraph (f) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(i) *National federation structures.* In the case of a membership organization that has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (f)(1), (2), or (3) of this section shall also qualify as a member of all affiliates for purposes of paragraphs (d) through (i) of this section. The factors set forth at 11 CFR 100.5(g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(j) *Non-applicability of state law in determining status of membership organizations.* The status of a membership organization, and of members, for purposes of this section, shall be determined pursuant to paragraphs (d) through (i) of this section

and not by provisions of state law governing unincorporated associations, trade associations, cooperatives, corporations without capital stock, or labor organizations.

(k) *Definition of election.* For purposes of this section, *election* means two separate processes in a calendar year, to each of which the \$2,000 threshold described above applies separately. The first process is comprised of all primary elections for Federal office, whenever and wherever held; the second process is comprised of all general elections for Federal office, whenever and wherever held. The term election shall also include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(l) *Definition of corporation.* For purposes of this section, *corporation* means any separately incorporated entity, whether or not affiliated.

(m) *Reporting.* When the aggregate costs under this section exceed \$2,000 per election, all costs of the communication(s) shall be reported on the filing dates specified in 11 CFR 104.6, and shall include the total amount expended for each candidate supported.

§ 100.135 Use of a volunteer's real or personal property.

No expenditure results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of this section, an individual's residential premises shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

§ 100.136 Use of a church or a community room.

No expenditure results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial

purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

§ 100.137 Invitations, food, and beverages.

The cost of invitations, food, and beverages is not an expenditure where such items are voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.106 and 100.107 to a candidate for candidate-related activity or to a political committee of a political party for party-related activity, to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

§ 100.138 Sale of food and beverages by vendor.

The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial charge, is not an expenditure, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: The aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

§ 100.139 Unreimbursed payment for transportation and subsistence expenses.

(a) *Transportation expenses.* Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or political committee of a political party is not an expenditure to the extent that:

(1) The aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and

(2) On behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(b) *Subsistence expenses.* Any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incident to volunteer activity is not an expenditure.

§ 100.140 Slate cards and sample ballots.

The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not an expenditure. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political party committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

§ 100.141 Payment by corporations and labor organizations.

Any payment made or obligation incurred by a corporation or labor organization is not an expenditure if under the provisions of 11 CFR part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

§ 100.142 Bank loans.

(a) *General provisions.* Repayment of a loan of money to a candidate or a political committee by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it:

- (1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;
- (2) Is made on a basis that assures repayment;
- (3) Is evidenced by a written instrument; and
- (4) Is subject to a due date or amortization schedule.

(b) *Reporting.* Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d).

(c) *Endorsers and guarantors.* Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(d) *Overdrafts.* For the purpose of this section, repayment of an overdraft made on a checking or savings account of a political committee shall be considered an expenditure unless:

- (1) The overdraft is made on an account that is subject to automatic overdraft protection; and
- (2) The overdraft is subject to a definite interest rate and a definite repayment schedule.

(e) *Made on a basis that assures repayment.* A loan, including a line of credit, shall be considered made on a basis that assures repayment if it is obtained using either of the sources of repayment described in paragraphs (e)(1) or (2) of this section, or a combination of paragraphs (e)(1) or (2) of this section:

(1) (i) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan; the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan; and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(ii) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions

of 11 CFR 110.4, part 114 and part 115; or

(2) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 through part 9012 or part 9031 through 9039, contributions, or interest income, provided that:

(i) The amount of the loan(s) obtained the basis of such funds does not exceed the amount of pledged funds;

(ii) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(iii) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(iv) The loan agreement requires the deposit of the public financing payments, contributions, interest or other income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan; and

(v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(3) If the requirements set forth in paragraph (e) of this section are not met, the Commission will consider the totality of circumstances on a case-by-case basis in determining whether a loan was made on a basis that assures repayment.

(f) This section shall not apply to loans described in 11 CFR 100.83 and 100.143.

§ 100.143 Brokerage loans and lines of credit to candidates.

Repayment of a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, as described in 11 CFR 100.83, is not an expenditure.

§ 100.144 Office building for State, local, or district party committees or organizations.

A payment, distribution, loan, advance, or deposit of money or anything of value, made by, or on behalf of, a State, local, or district party committee or organization for the purchase or construction of an office building in accordance with 11 CFR 300.35 is not an expenditure.

§ 100.145 Legal or accounting services to political party committees.

Legal or accounting services rendered to or on behalf of any political committee of a political party are not expenditures if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities that directly further the election of any designated candidate for Federal office. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

§ 100.146 Legal or accounting services to other political committees.

Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not expenditures if the person paying for such services is the regular employer of the individual rendering such services and if the services are solely to ensure compliance with the Act or 26 U.S.C. 9001 et seq. and 9032 et seq. For purposes of this section, a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h). Expenditures for these services by a candidate certified to receive Primary Matching Funds under 11 CFR part 9034 do not count against such candidate's expenditure limitations under 11 CFR part 9035 or 11 CFR 110.8. Unless paid for with federal funds received pursuant to 11 CFR part 9005, disbursements for these services by a candidate who is certified to receive payments from the Presidential Election Campaign Fund under 11 CFR part 9005 do not count against that candidate's expenditure limitations under 11 CFR 110.8.

§ 100.147 Volunteer activity for party committees.

The payment by a state or local committee of a political party of the costs of campaign materials (such as

pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that the following conditions are met:

(a) *Exemption does not apply to general public communications or political advertising.* Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For the purposes of this paragraph, the term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR part 300 for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for Federal candidates.* Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *Distribution of materials by volunteers.* Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of this paragraph, payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(e) *Reporting.* If made by a political party committee, such payments shall be reported by that committee as disbursements, in accordance with 11 CFR 104.3, but need not be allocated to specific candidates in committee reports.

(f) *State candidates and their campaign committees.* Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not expenditures, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(g) *Exemption not applicable to campaign materials purchased by*

national party committees. Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.148 Volunteer activity for candidate.

The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials that include information on or any reference to a candidate for Federal office and that are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not an expenditure on behalf of such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of this section, the term *direct mail* means mailings by commercial vendors or mailings made from lists that were not developed by the candidate. *But see* 11 CFR 100.24, 104.17(a), and part 300, subparts D and E for exempt activities that also constitute Federal election activity.

§ 100.149 Voter registration and get-out-the-vote activities for Presidential candidates ("coattails" exception).

The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election of such candidates provided that the following conditions are met:

(a) *Exemption not applicable to general public communication or political advertising.* Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this paragraph, the term *direct mail* means any mailing(s) by a

commercial vendor or any mailing(s) made from commercial lists.

(b) *Allocation.* The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. *But see* 11 CFR 100.24, 104.17(a), and part 300, subpart B for exempt activities that also constitute Federal election activity.

(c) *Contributions designated for Federal candidates.* Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For the purposes of this paragraph, a contribution shall not be considered a designated contribution if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(d) *References to House or Senate candidates.* For purposes of this section, if such activities include references to any candidate(s) for the House or Senate, the costs of such activities that are allocable to that candidate(s) shall be an expenditure on behalf of such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(e) *Phone banks.* For purposes of this section, payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(f) *Reporting of payments for voter registration and get-out-the-vote activities.* If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements, in accordance with 11 CFR 104.3 but such payments need not be allocated to specific candidates in committee reports except as provided in paragraph (d) of this section.

(g) *Exemption not applicable to donations by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote*

activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

§ 100.150 Ballot access fees.

Amounts transferred by a party committee to another party committee or payments made to the appropriate State official of fees collected from candidates or their authorized committees as a condition of ballot access are not expenditures.

§ 100.151 Recounts.

A purchase, payment, distribution, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not an expenditure except that the prohibitions of 11 CFR 110.4(a) and part 114 apply.

§ 100.152 Fundraising costs for Presidential candidates.

(a) *Costs incurred in connection with the solicitation of contributions.* Any costs incurred by a candidate or his or her authorized committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, or by a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. These costs shall, however, be reported as disbursements pursuant to 11 CFR part 104.

(b) *Definition of in connection with the solicitation of contributions.* For a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2), *in connection with the solicitation of contributions* means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs associated with a fundraising reception or dinner.

(c) *Limitation on costs that may be exempted.* For a candidate who has been certified to receive Presidential Primary Matching Fund Payments, the costs that may be exempted as fundraising expenses under this section shall not exceed 20% of the overall

expenditure limitation under 11 CFR 9035.1, and shall equal the total of:

(1) All amounts excluded from the state expenditure limitations for exempt fundraising activities under 11 CFR 110.8(c)(2), plus

(2) An amount of costs that would otherwise be chargeable to the overall expenditure limitation but that are not chargeable to any state expenditure limitation, such as salary and travel expenses. See 11 CFR 106.2.

§ 100.153 Routine living expenses.

Payments by a candidate from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses that would have been incurred without candidacy, including the cost of food and residence, are not expenditures. Payments for such expenses by a member of the candidate's family as defined in 11 CFR 113.1(g)(7), are not expenditures if the payments are made from an account jointly held with the candidate, or if the expenses were paid by the family member before the candidate became a candidate.

§ 100.154 Candidate debates.

Funds used to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f) are not expenditures.

Dated: July 26, 2002.

David M. Mason,

Chairman, Federal Election Commission.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Liquid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for oral use of an ivermectin solution in sheep for the treatment and control of various internal parasites.

DATES: This rule is effective August 5, 2002.